

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 8

IN THE MATTER OF:

WELD COUNTY WASTE DISPOSAL SITE
Near Ft. Lupton, Weld County, Colorado
SSID #08-9T

Proceeding under Section 122(h)(1) of CERCLA
42 U.S.C. § 9622(h)(1).

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) U.S. EPA Region 8
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) CERCLA Docket No. **CERCLA-08-2003-12**
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AGREEMENT FOR RECOVERY
OF PAST RESPONSE COSTS

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APPENDICES: A - SETTLING PARTIES

B - VOLUMETRIC RANKING/COST SHARE REPORT

I. JURISDICTION

1. This Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 6922(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D. For technical issues, this authority was further delegated to the Assistant Regional Administrator for the Office of Ecosystems Protection and Remediation (the "ARA"), and for issues regarding enforcement of this Order or cost recovery matters, the authority has been delegated to the Directors of the Technical Enforcement Program and Legal Enforcement Program for EPA Region VIII by EPA Delegation No. 14-14-C.

2. This Agreement is made and entered into by EPA and the parties listed in Appendix A to this Agreement ("Settling Parties"). Each Settling Party consents to and will not contest EPA's jurisdiction to enter into this Agreement or to implement or enforce its terms.

II. BACKGROUND

3. This Agreement concerns the Weld County Waste Disposal, Inc. site located in Section 12, T1N, R66W, in Weld County, Colorado. The facility's address is 4982 Weld County Road 35, and is located approximately 4½ miles east of Ft. Lupton, Colorado (hereafter referred to as the "Site" or the "Facility"). EPA alleges that the Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. The facility was permitted to receive oil-field brine waste from oil field drilling operations along the front range. The owners applied for a special use permit to receive industrial wastes in Pond E. Halogenated organic solvents have been detected in the soils and groundwater at the site, and the contaminant plume stretches $\frac{3}{4}$ of a mile down gradient from Pond E.

5. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, including, but not limited to, the following activities:

- a. Investigation and waste characterization;
- b. Excavation of soils in the former receiving area and Pond E;
- c. Staging and dewatering of contaminated soils;
- d. Disposition of soil stockpiles and treatment of higher concentration soils;
- e. Groundwater assessment, sampling and monitoring activities;
- f. Enforcement activities; and,
- g. Responsible party search activities and data base construction.

6. In performing this response action, EPA incurred response costs at or in connection with the Site, through September 30, 2002, in the amount of \$5,084,253.85. Upon consideration of the equities, EPA is seeking to recover \$3,813,190.39 through this settlement.

7. EPA alleges that Settling Parties are responsible parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and are jointly and severally liable for response costs incurred at or in connection with the Site.

8. EPA and Settling Parties desire to resolve Settling Parties' alleged civil liability for Past Response Costs without litigation and without the admission or adjudication of any issue of fact or law.

III. PARTIES BOUND

9. This Agreement shall be binding upon EPA and upon Settling Parties and their heirs, successors and assigns. Any change in ownership or corporate or other legal status of a Settling Party, including but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Party's responsibilities under this Agreement. Each signatory to this Agreement certifies that he or she is authorized to enter into the terms and conditions of this Agreement and to bind legally the party represented by him or her.

IV. DEFINITIONS

10. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Agreement or in any appendix attached hereto, the following definitions shall apply.

a. "Agreement" shall mean this Agreement and any attached appendices. In the event of conflict between this Agreement and any Appendix, the Agreement shall control.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.

c. "Day" shall mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

e. "Interest" shall mean interest at the current rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

f. "Paragraph" shall mean a portion of this Agreement identified by an arabic numeral or a lower case letter.

g. "Parties" shall mean EPA and the Settling Parties.

h. "Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that EPA or the U.S. Department of Justice, on behalf of EPA, has incurred at or in connection with the Site through September 30, 2002.

i. "Section" shall mean a portion of this Agreement identified by a roman numeral.

j. "Settling Parties" shall mean those parties identified in Appendix A.

k. "Site" shall mean the Weld County Waste Disposal Superfund Site, encompassing approximately 6 acres, and is located in Weld County, Colorado. The Site address is 4982 Weld County Road 35, approximately 4½ miles east of Ft. Lupton, Weld County, Colorado, and designated by the following property description: NW¼ of the NW¼ of Section 12, T1N, R66W, in Weld County, Colorado.

l. "United States" shall mean the United States of America, including it departments, agencies and instrumentalities.

V. REIMBURSEMENT OF RESPONSE COSTS

11. Within 30 days of the effective date of this Agreement, the Settling Parties shall pay to the EPA Hazardous Substance Superfund their settlement cost share as identified in Appendix B to this Agreement, in reimbursement of EPA's Past Response Costs.

12. Payments shall be made by certified or cashier's check, made payable to "EPA Hazardous Substance Superfund." Each check shall reference the name and address of the party making payment (as it appears in Appendix A to this Agreement), the Site name (Weld County Waste Disposal Site), the EPA Region and Site/Spill ID Number (SSID #08-9T), and the EPA docket number for this action (refer to the cover page of this Agreement). Payments shall be sent to:

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|-------------------|--|
| Via Regular mail: | Mellon Bank EPA Region 8 Attn: Superfund Accounting Post Office Box 360859 Pittsburgh, Pennsylvania 15251-6859 |
|-------------------|--|

| | |
|-----------------------------------|---|
| Via Express or Overnight Mail: | US Environmental Protection Agency Mellon Client Services Center, Room 154-0670 500 Ross Street |
|-----------------------------------|---|

Pittsburgh, Pennsylvania 15262-0001

Wire transfers must be sent directly to the Federal Reserve bank in New York, New York, with the following information:

ABA=021030004
TREAS NYC/CTR/
BNF=/AC-68011008

13. At the time of payment, each Settling Party shall send notice that such payment has been made to:

Carol Pokorny, 8ENF-T
Technical Enforcement Program
U.S. EPA, Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

VI. FAILURE TO COMPLY WITH AGREEMENT

14. In the event that any payment required by Section V. (Reimbursement of Response Costs) is not made when due, Interest shall accrue on the unpaid balance beginning from the effective date of this Agreement through the date of payment.

15. If any amounts due to EPA under Section V. above are not paid by the required date, each non-complying Settling Party shall pay to EPA, as a stipulated penalty, in addition to the Interest required by the Paragraph above, \$500 per violation per day that such payment is late.

16. Stipulated penalties are due and payable within 30 days of the date of demand for payment of the penalties. All payments to EPA under this Section shall be identified as "stipulated penalties" with the non-complying Settling Party's name and shall be made in accordance with the instructions for payment detailed in Section V above.

17. Penalties shall accrue as provided above regardless of whether EPA has notified the Settling Party of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after performance is due, or the day a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Agreement.

18. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to EPA by virtue of a Settling Party's failure to comply with the requirements of this Agreement, any Settling Party who fails or refuses to comply with any term or condition of this Agreement shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States, on behalf of EPA, brings an action to enforce this Agreement, the Settling Party against whom an action has been

brought shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

19. Notwithstanding any other provision of this Section, in the event of the failure of any one or more Settling Parties to make the payments required under this Agreement, EPA shall seek recovery from the non-complying party first, and then may, in its unreviewable discretion, seek the remaining payments from other Settling Parties.

20. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Agreement.

VII. COVENANT NOT TO SUE BY EPA

21. Except as specifically provided in Section VIII (Reservations of Rights by EPA), EPA covenants not to sue Settling Parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs. This covenant shall take effect upon receipt by EPA of all amounts required by Section V. (Reimbursement of Response Costs) and Section VI. (regarding interest on late payments and stipulated penalty for late payment). This covenant not to sue is conditioned upon the satisfactory performance by Settling Parties of their obligations under this Agreement. This covenant not to sue extends only to Settling Parties and does not extend to any other person.

VIII. RESERVATIONS OF RIGHTS BY EPA

22. The covenant not to sue by EPA set forth in Section VII. above does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Agreement is without prejudice to, all rights against Settling Parties with respect to all other matters, including but not limited to:

- a. liability for failure of Settling Parties to meet a requirement of this Agreement;
- b. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs;
- c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;
- d. criminal liability; and
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

23. Nothing in this Agreement is intended to be, nor shall it be construed as, a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a signatory to this Agreement.

IX. COVENANT NOT TO SUE BY SETTLING PARTIES

24. Settling Parties agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Past Response Costs or this Agreement, including but not limited to:

- a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claims arising out of the response actions at the Site for which the Past Response Costs were incurred; and,
- c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response Costs.

25. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

X. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

26. Nothing in this Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Agreement. EPA and Settling Parties each reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

27. EPA and Settling Parties agree that the actions undertaken by Settling Parties in accordance with this Agreement do not constitute an admission of any liability by any Settling Party. Settling Parties do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Agreement, the validity of the facts or allegations contained in Section II. (Background) of this Agreement.

28. The Parties agree that Settling Parties are entitled, as of the effective date of this Agreement, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Agreement. The "matters addressed" in this Agreement are Past Response Costs.

29. Each Settling Party agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Agreement, it will notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Each Settling Party also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Agreement, it will notify EPA in writing within 10 days of service of the complaint or claim upon it. In addition, each Settling Party shall notify EPA within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Agreement.

30. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Parties shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue by EPA set forth in Section VII.

XI. RETENTION OF RECORDS

31. Until 5 years after the effective date of this Agreement, each Settling Party shall preserve and retain all records and documents now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or to the liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary.

32. After the conclusion of the document retention period in the preceding Paragraph, Settling Parties shall notify EPA at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA, Settling Parties shall deliver any such records or documents to EPA. Settling Parties may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Parties assert such a privilege, they shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted. However, no documents, reports, or other information created or generated pursuant to the requirements of this or any other judicial or administrative settlement with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document, the document shall be provided to EPA in redacted form to mask the privileged information only. Settling Parties shall retain all records and documents that they claim to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Parties' favor.

33. By signing this Agreement, each Settling Party certifies individually that, to the best of its knowledge and belief, it has:

a. conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA, all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant or contaminant at or in connection with the Site;

b. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site, after notification of potential liability or the filing of a suit against the Settling Party regarding the Site; and,

c. fully complied with any and all EPA requests for information regarding the Site, pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

XII. NOTICES AND SUBMISSIONS

___34. Whenever, under the terms of this Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice, as specified herein, shall constitute complete satisfaction of any written notice requirement of this Agreement with respect to EPA and Settling Parties.

As to EPA: Carol J. Pokorny, 8ENF-T
U.S. Environmental Protection Agency
999 18th Street, Suite 300
Denver, Colorado 80202-2466
Phone: (303) 312-6970

As to Settling Parties: The person who will serve as the contact
for each individual Settling Party is listed on
the Settling Party's signature page to this Agreement.

XIII. INTEGRATION/APPENDICES

35. This Agreement and its Appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Agreement.

The following appendices are attached to and incorporated into this Agreement: "Appendix A is a list of the Settling Parties. Appendix B is the Volumetric Ranking/Cost Share Report.

XIV. PUBLIC COMMENT

36. This Agreement shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

XV. ATTORNEY GENERAL APPROVAL

37. The Attorney General or his designee has approved the settlement embodied in this Agreement in accordance with Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1).

XVI. EFFECTIVE DATE

38. The effective date of this Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Section XIV. (Public Comment) has closed and that comments received, if any, do not require modification of, or EPA withdrawal from, this Agreement.

IT IS SO AGREED:

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

By: **SIGNED** **8/20/03**
Michael T. Risner, Director Date
Legal Enforcement Program
U.S. Environmental Protection Agency
Region VIII

By: **KELCEY LAND FOR/** **8/20/03**
Sharon L. Kercher, Director Date
Technical Enforcement Program
U.S. Environmental Protection Agency
Region VIII

In Re: The Weld County Waste Disposal Site, in Weld County, Colorado (SSID #08-9T). Agreement for Recovery of Past Response Costs

FOR SETTLING PARTY _____

| <u>Rank</u> | <u>Total Gallons</u> | <u>% of Total</u> | <u>Lowry Adjustment</u> | <u>Adjusted Gallon Total</u> | <u>Settlement Cost Share</u> |
|-------------|--------------------------|-------------------|-----------------------------|----------------------------------|----------------------------------|
|-------------|--------------------------|-------------------|-----------------------------|----------------------------------|----------------------------------|

THE UNDERSIGNED SETTLING PARTY enters into this Agreement pursuant to Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1) relating to the Weld County Waste Disposal Site, in Weld County, Colorado.

By: _____
Name and Title Date

Print Name and Title

Address: _____

Phone #: _____

IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS, PLEASE CONTACT THE REGIONAL HEARING CLERK.

THIS DOCUMENT WAS FILED IN THE RHC'S OFFICE ON SEPTEMBER 12, 2003.

THIS DOCUMENT BECAME EFFECTIVE JANUARY 5, 2004 AFTER A 30-DAY PUBLIC COMMENT PERIOD.